

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-04 H-02 INR-07 L-03

NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15 USIA-06

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FM USMISSION USBERLIN

TO SECSTATE WASHDC 1675

AMEMBASSY BONN

INFO AMEMBASSY BERLIN

AMEMBASSY LONDON

AMEMBASSY MOSCOW

USMISSION NATO

AMEMBASSY PARIS

C O N F I D E N T I A L USBERLIN 2316

E.O. 11652: GDS

TAGS: PGOV, PFOR, PINT, WB, GW, UR

SUBJECT: SOVIET PROTEST AT INVALIDATION OF
BERLIN ELECTIONS

REF: USBERLIN 2291

1. SUMMARY: SOVIET EMBASSY PROTESTED TO ALLIES
RECENT DECISION OF BERLIN ELECTORAL COURT INVALIDATING
MARCH 2 ELECTION RESULTS IN TWO ZEHLENDORF CONSTITU-
ENCIES (REFTEL). SOVIET STATEMENT TERMED DECISION
"OPEN" VIOLATION OF QA, ESPECIALLY OF SECTION
DECLARING THAT PROVISIONS OF BASIC LAW AND BERLIN
CONSTITUTION THAT CONTRADICT PROVISION THAT WESTERN
SECTORS CONTINUE NOT TO BE CONSTITUENT PART OF FRG
AND NOT TO BE GOVERNED BY IT HAVE BEEN SUSPENDED.
POLAD GAVE PRELIMINARY VIEW THAT COURT DECISION DID
NOT CONTRADICT QA AND WAS CONSISTENT WITH LONG-
STANDING PRACTICE. HOWEVER, HE PROMISED FULLER
RESPONSE LATER. WE ARE PROVIDING BELOW SUGGESTED
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TEXT OF RESPONSE. END SUMMARY.

2. SOVIET EMBASSY COUNSELLOR KHOTULEV CALLED ON CHAIRMAN (US) POLAD NOV 20 TO PROTEST NOV 12 DECISION OF BERLIN ELECTORAL COURT TO INVALIDATE MARCH 2 ELECTION RESULTS IN TWO ZEHLENDORF CONSTITUENCIES. ORAL STATEMENT READ AS FOLLOWS: BEGIN TEXT AS HAS BECOME KNOWN, THE SO-CALLED "ELECTORAL REVIEW COURT" IN WEST BERLIN DECIDED TO DECLARE INVALID THE RESULTS OF ELECTIONS TO THE HOUSE OF REPRESENTATIVES IN TWO ELECTORAL DISTRICTS OF ZEHLENDORF BEZIRK. IN DOING SO, THE SAID COURT REFERRED TO THE PROVISIONS OF THE "BASIC LAW" (CONSTITUTION) OF THE FRG, IN PARTICULAR, TO ARTICLE 28 CONCERNING THE METHOD OF CONDUCTING ELECTIONS IN THE FEDERAL REPUBLIC OF GERMANY, AND TO ARTICLE 31, CONCERNING THE PRIORITY OF FEDERAL LAW OVER THE LAW OF THE DIFFERENT LAENDER OF THE FRG.

IT IS ALSO KNOWN THAT THE APPROPRIATE MUNICIPAL AUTHORITY IN WEST BERLIN AGREED TO THE SAID DECISION AND EVEN DETERMINED IN CONFORMITY WITH IT THE DATE FOR CONDUCTING NEW ELECTIONS IN THE TWO ELECTORAL DISTRICTS REFERRED TO ABOVE.

THE SOVIET SIDE DRAWS THE MOST SERIOUS ATTENTION OF THE AUTHORITIES OF THE THREE POWERS TO THE FACT THAT THE DECISION OF THE "ELECTORAL REVIEW COURT", TAKEN WITH REFERENCE TO AND ON THE BASIS OF THE "BASIC LAW" OF THE FRG, IS AN OPEN VIOLATION OF THE PROVISIONS OF THE QUADRIPARTITE AGREEMENT OF SEPTEMBER 3, 1971, THAT THE PROVISIONS OF THE "BASIC LAW" OF THE FRG AND OF THE CONSTITUTION OPERATIVE IN THE WESTERN SECTORS OF BERLIN ARE NOT IN ACCORD WITH THE PROVISION THAT THESE SECTORS DO NOT BELONG TO THE FRG AND ARE SUSPENDED IN THEIR EFFECT AND AS BEFORE ARE NO IN FORCE.

RESERVING FOR ITSELF THE RIGHT TO RETURN TO A MORE DETAILED EXPOSITION OF ITS POSITION IN CONNECTION WITH THIS RUDE VIOLATION OF THE FOUR POWER AGREEMENT OF SEPTEMBER 3, 1971, THE SOVIET SIDE WOULD LIKE TO RECEIVE FROM THE AUTHORITIES OF THE

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USA, GREAT BRITAIN, AND FRANCE AN EXPLANATION WITH RESPECT TO THE ABOVE AS WELL AS THEIR POSITION ON THIS QUESTION.

CONSIDERING THE IMPORTANCE OF THIS QUESTION, THE SOVIET SIDE EXPRESSES THE HOPE FOR AN EARLY ANSWER FROM THE AUTHORITIES OF THE THREE POWERS. END TEXT

3. US POLAD REPLIED THAT, SINCE THIS QUESTION

TOUCHED ON LEGAL SITUATION IN BERLIN, HE WOULD BE UNABLE TO PROVIDE ANSWER BEFORE CONSULTING WITH LEGAL ADVISER. IT WAS OUR IMPRESSION, HOWEVER, THAT COURT DECISION DID NOT REPRESENT VIOLATION OF QA AND THAT IT WAS CONSISTENT WITH LONG-STANDING PRACTICE IN BERLIN. POLAD PROMISED FULLER ANSWER LATER.

4. COMMENT: WE PROMISED TO STUDY THE SOVIET STATEMENT AND COME BACK TO IT IN MORE DETAIL RATHER THAN REST ON THE SIMPLE ANSWER WE OUTLINED IN REFTEL BECAUSE THE SOVIET PROTEST WAS LINGUISTICALLY COMPLEX, AND WE WISHED TO BE SURE THERE WERE NO HIDDEN POINTS. NOW THAT WE HAVE WORKED THROUGH IT, WE BELIEVE THAT THE SUGGESTED ANSWER REMAINS SUFFICIENT. WHAT THE ALLIES HAVE SUSPENDED FROM EFFECT AND WHAT IS REFERRED TO IN ANNEX II OF THE QA TO WHICH THE SOVIET STATEMENT ELLIPTICALLY REFERS, ARE NOT THE ARTICLES CITED BY THE SOVIETS BUT THOSE WHICH PROCLAIM THAT BERLIN IS A LAND OF THE FEDERAL REPUBLIC AND THAT THE BASIC LAW AND THE OTHER LAWS OF THE FRG ARE BINDING AS SUCH ON THE CITY. WE WOULD SUGGEST, THEREFORE, THAT WE GIVE KHOTULEV THE FOLLOWING RESPONSE:

BEGIN TEXT: THE ALLIED AUTHORITIES ARE AWARE OF THE RECENT DECISION OF THE BERLIN ELECTORAL REVIEW COURT. THEY CONSIDER THIS AN INDEPENDENT ACTION OF A COMPETENT BERLIN COURT AND NOT AN EXERCISE OF DIRECT STATE AUTHORITY OVER THE WESTERN SECTORS BY THE FRG. IT IS NOT IN ANY WAY INCONSISTENT WITH THE QUADRIPARTITE AGREEMENT. RATHER, IT IS IN CONFORMITY WITH A QUARTER-CENTURY OLD AUTHORIZATION OF THE ALLIED AUTHORITIES AND THE

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CONSISTENT PRACTICE OF BERLIN COURTS PURSUANT TO THAT AUTHORIZATION. END TEXT.
WE THINK IT MIGHT ALSO BE USEFUL TO HAND KHOTULEV A COPY OF BK/O(50)75 AND CALL HIS ATTENTION PARTICULARLY TO PARAS 2(B) AND 2(C) WHICH MAKE CLEAR WHAT ARTICLES OF THE BERLIN CONSTITUTION ARE SUSPENDED AND THAT BERLIN COURTS CAN RECONCILE CONFLICTS BETWEEN THE BERLIN CONSTITUTION AND THE FRG BASIC LAW IN FAVOR OF THE LATTER.
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